

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO.440/2006 IN FIRST APPEAL ST. NO.
12998/2005

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

CORAM : D.D.SINHA AND
S.R.DONGAONKAR, JJ.

DATED : AUGUST 28, 2006

Heard Shri Shareef, learned
Counsel for the appellants, and Shri
Mehadia, learned Counsel for the
respondent no.1.

Civil Application No.5040/2006 is
moved by the appellants seeking leave to
pay Court Fee in First Appeal St. No.
12998/2005.

Shri Shareef, learned Counsel for
the appellants, states that the appellants
are senior citizens and facing litigation for
a long time and are not having financial

assistance and, therefore, appeal was filed in forma pauperis. However, during pendency of the first appeal, finance was arranged by the appellants with the help of their relatives and details of the same are mentioned in para (3) of the civil application. It is, therefore, prayed that civil application may be allowed in the interest of justice.

Shri Mehadia, learned Counsel for the respondent no.1, states that the appellants, though otherwise financially sound, tried to mislead this Court by filing appeal in forma pauperis and required this Court to conduct enquiry in this regard. It is submitted that in such circumstances, if this Court is inclined to allow civil application, heavy costs may be saddled on the appellants.

It is no doubt true that in the normal set of circumstances, in such situation, this Court would be justified in saddling exemplary costs, if time of this Court is taken away without any justification and proceedings are filed in

forma pauperis knowing fully well that person is otherwise financially sound. However, in the instant case, appellants appear to be elderly persons and details as to how finances are generated by them for the purpose of paying Court Fee are mentioned in para (3) of the civil application and, therefore, in the interest of justice, we allow the civil application. However, we make it clear that in future, appellants must take care not to indulge in such tactics.

JUDGE

JUDGE

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